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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/634,071	08/04/2003	Rebecca Lyn Dilnik	18,128	5244

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EXAMINER

RAYFORD, SANDRA M

ART UNIT	PAPER NUMBER
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1772

DATE MAILED: 02/25/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	<b>Application No.</b> 10/634,071	<b>Applicant(s)</b> DILNIK ET AL.	
	<b>Examiner</b> Sandra M. Nolan	<b>Art Unit</b> 1772	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☐ Responsive to communication(s) filed on \_\_\_\_.
- 2a) ☐ This action is **FINAL**.                      2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1-83 is/are pending in the application.  
     4a) Of the above claim(s) 28-49 and 69-83 is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-27 and 50-68 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
     Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
     Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).  
     a) ☐ All    b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- |  |   |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)  | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. ____. |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)   | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)             |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date <u>1-6-04 + 2-7-05</u> . | 6) <input type="checkbox"/> Other: ____.  |

## **DETAILED ACTION**

### ***Claims***

1. Claims 1-83 are pending.

### ***Election/Restrictions***

2. Restriction to one of the following inventions is required under 35 U.S.C. 121:

- I. Claims 1-27 and 50-68, drawn to poufable products, classified in class 428, subclass 542.8.
- II. Claims 28-49 and 69-83, drawn to methods of making/using poufable products, classified in class 264, subclass (unknown).

3. The inventions are distinct, each from the other because of the following reasons:

Inventions I and II are related as process of making and product made. The inventions are distinct if either or both of the following can be shown: (1) that the process as claimed can be used to make other and materially different product or (2) that the product as claimed can be made by another and materially different process (MPEP § 806.05(f)). In the instant case the process can be used to make s surgical bag.

Inventions I and II are related as product and process of use. The inventions can be shown to be distinct if either or both of the following can be shown: (1) the process for using the product as claimed can be practiced with another materially different product or (2) the product as claimed can be used in a materially different process of using that product (MPEP § 806.05(h)). In the instant case, the product can be used as a surgical bag.

Art Unit: 1772

Because these inventions are distinct for the reasons given above and have acquired a separate status in the art as shown by their different classification, restriction for examination purposes as indicated is proper.

Because these inventions are distinct for the reasons given above and the search required for Group I is not required for Group II, restriction for examination purposes as indicated is proper.

Because these inventions are distinct for the reasons given above and have acquired a separate status in the art because of their recognized divergent subject matter, restriction for examination purposes as indicated is proper.

4. During a telephone conversation with Ms. Alyssa Dudkowski (920/721.2433) on 18 February 2005 a provisional election was made with traverse to prosecute the invention of Group I, claims 1-27 and 50-68.

5. Affirmation of this election must be made by applicant in replying to this Office action.

6. Claims 28-49 and 69-83 are withdrawn from further consideration by the examiner, 37 CFR 1.142(b), as being drawn to a non-elected invention.

7. Applicant is reminded that upon the cancellation of claims to a non-elected invention, the inventorship must be amended in compliance with 37 CFR 1.48(b) if one or more of the currently named inventors is no longer an inventor of at least one claim remaining in the application. Any amendment of inventorship must be accompanied by a request under 37 CFR 1.48(b) and by the fee required under 37 CFR 1.17(i).

***Summary of Base Elected Claims***

8. Claim 1 covers a poufable product comprising:

- 1+ flat plies of flexible sheet material with 1+ edges
- 1+ cords,

wherein the cord engages plies of the material in a way the permits bunching on or about the cord.

9. Claim 50 covers a poufable product comprising:

- 1+ plies of flexible sheet material with 1+ edges

wherein at least a portion of the sheet material is shrinkable to that it can bunch on itself.

**Notes:**

a. The phrase “capable of being converted into a pouf product” (claims 1 and 50, line 1 of each) does not distinguish the product from other products having the same structure and different uses.

b. The phrase “the cord. . . the cord” (claim 1, lines 4-5) is interpreted to mean a draw string.

c. It is well known that poufs or pouf products are made when netting or mesh-containing materials are bunched using cords, strings, ropes or draw strings.

***Claim Rejections - 35 USC § 112***

10. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

11. Claims 16-19 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Art Unit: 1772

Claims 16-19 recites the limitation "pouf product" in line 1. There is insufficient antecedent basis for this limitation in the claim because claim 1 calls for a "poufable product".

***Claim Rejections - 35 USC § 103***

12. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

13. The factual inquiries set forth in *Graham v. John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:

1. Determining the scope and contents of the prior art.
2. Ascertaining the differences between the prior art and the claims at issue.
3. Resolving the level of ordinary skill in the pertinent art.
4. Considering objective evidence present in the application indicating obviousness or nonobviousness.

14. Claims 1-27 are rejected under 35 U.S.C. 103(a) as being unpatentable over Gordon et al (WO 95/00116) or JP 10192188A (abstract) in view of Moerhle (US 4,108,180).

Gordon teaches, at page 6, lines 14-16, netting tubes that are bunched using rope. The product is a cleaning product (abstract).

JP 10192188A teaches a bath scrub device (title) made by tying cylindrical netting in its center with a string (first sentence of abstract). A flower shaped puff is formed (second paragraph of abstract).

Art Unit: 1772

Neither teaches sheets that lie flat or bunch.

Moehrle teaches reusable tampons that include mesh bags that have draw strings (abstract). The bags can lie flat (Col. 2, line 27) and the bags bunch when the draw strings are used (col. 2, line 35 and col. 4, lines 27-32).

The references are analogous because they all deal with mesh-like materials that have strings, cords or ropes in or around them.

The examiner deemed strings, cords and ropes to be equivalent when they are used to produce bunching.

It would have been obvious to one having ordinary skill in the art at the time of the invention to employ the bunching technique of Moehrle to make poufs using the netting of Gordon or the Japanese abstract.

The motivation to employ the bunching technique of Moehrle to make poufs using the netting of Gordon or the Japanese abstract is found at col. 2, line 35 and col. 4, lines 27-32 of Moehrle, where the bunching of mesh bags is effected using its draw strings.

It is deemed desirable to make poufs having bunching therein to give them the appearance of flowers and, thereby, render them more aesthetically pleasing.

The use of plies of netting having different properties is deemed an obvious way to modify the appearance of the poufs.

The size or denier of the netting is deemed an obvious matter of design/engineering choice.

Art Unit: 1772

The use of biodegradable materials in the poufs is deemed an obvious way to render the product more acceptable to consumers.

The use of features commonly found in bath poufs is deemed an obvious matter of design/engineering choice.

15. Claims 50-68 are rejected under 35 U.S.C. 103(a) as being unpatentable over Gordon in view of JP 06344479 A (abstract).

Gordon is discussed above. Gordon shows, in Figure 1, the conventionality of wrinkled bath products. It fails to teach wrinkled products made by shrinkage.

The '479 abstract teaches that composite sheets can be made of shrinking yarns and "water shrunk" to yield a mesh appearance (first paragraph of abstract). The composite has a wrinkled appearance.

The '479 abstract and Gordon are analogous because they both deal with wrinkled products.

It would have been obvious to one having ordinary skill in the art to employ the composite sheets of the '479 abstract to make wrinkled bathing products, per Gordon, in order to make them appear pouf-like.

The motivation to employ the composite of the '479 abstract to make the bath products of Gordon is found in the first paragraph of the abstract, where shrinkage is said to cause wrinkles in the composite.

It is deemed desirable to make bath products that are wrinkled in order to make them textually appealing.

Art Unit: 1772

The use of plies of netting having different properties is deemed an obvious way to modify the appearance of the poufs.

The size or denier of the netting is deemed an obvious matter of design/engineering choice.

The use of biodegradable materials in the poufs is deemed an obvious way to render the product more acceptable to consumers.

The use of features commonly found in bath poufs is deemed an obvious matter of design/engineering choice.

***Citation as of Interest***


16. Ellman (Us 4,428,375) is cited as of interest for showing a surgical bag made of netting having multiple drawstrings.

***Conclusion***

Any inquiry concerning this communication should be addressed to Sandra M. Nolan-Rayford, at telephone number 571/272-1495. She can be reached Monday through Thursday, from 6:30 am to 4:00 pm, ET.

If attempts to reach the examiner are unsuccessful, contact her supervisor, Harold Pyon, at 571/272-1498.

The fax number for patent application documents is 703/872-9306.

  
S. M. Nolan-Rayford  
Primary Examiner  
Technology Center 1700

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